IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Bhadar Ram. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 413/2005
against the order dated 3-5-2003 passed
by the Additional Sessions Judge, Nohar,
in Criminal Revision No. 16/2001.

...

Date of Order: August 24, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pritam Solanki, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 3-5-2003 passed by the Additional Sessions Judge, Nohar, district Hanumangarh (for short, "the Revisional Court" hereinafter) in Criminal Revision Petition No. 16/2001, whereby the revision petition filed by the non-petitioner No.2 against the order dated 9-1-2001 passed by the Additional Chief Judicial Magistrate, Nohar (for short, "the trial Court" hereinafter) on a private complaint was allowed and the order of the trial Court dated 9.1.2001 dismissing the complaint filed by the non-petitioner

No.2 under Section 203 of the Code was set aside and the matter was remanded to the trial Court to pass a fresh order on consideration of the material placed before it, as also by affording an opportunity of hearing to the complainant.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the Courts below.

It is contended by the learned counsel for the petitioner that the complainant/non-petitioner No.2 earlier filed an FIR, which was investigated by the police and after investigation, the police filed negative Final Report before the trial Court, which was accepted by the trial Court on 7-7-1999 after service of notice to the complainant/non-petitioner No.2. After acceptance of the negative final report, the non-petitioner No.2 filed a complaint on the same facts. The trial Court recorded the statements of the complainant under Section 200 of the Code and his witnesses PW 2 Gora, PW 3 Savitri, PW 3 Mahendra Singh and PW 4 Shishpal under Section 202 of the Code and declined to take cognizance and dismissed the complaint only on the ground that the negative final report submitted by the police has been accepted. That order came to be challenged by the complainant/non-petitioner No.2 before the Revisional Court. The Revisional Court set aside the order passed by the trial Court on the ground that the trial Court was required to appreciate the statements of the complainant and the

witnesses recorded by it under Sections 200 and 202 of the Code as in the instant case, the statements of as many as five witnesses have been record and without appreciating the evidence of those witnesses, dismissing the complaint on the ground that earlier the negative final report has been accepted, cannot be said to be justified. Learned counsel further contended that on dismissal of the complaint filed by the non-petitioner No.2, the Revisional Court allowed the revision without impleading the petitioner as a party.

Till the cognizance is taken of the offence, the Court below is not obliged to hear the accused.

In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandhan Maharaj vs. State of A.P., **AIR 1999, SC 2332**, the Hon'ble Supreme Court held that there is nothing in section 173(8) to suggest that the Court is obliged to hear the accused before any direction for further investigation is made.

So far as filing of complaint on the same set of facts after acceptance of the negative final report by the trial Court is concerned, this issue is no more res integra in view of decision of the Hon'ble Supreme Court in Gopal Vijay Verma Vs. Bhuvneshwar Prasad Sinha, (1982 (3) SCC 510.

In this view of the matter and in view of the decision of the Hon'ble Supreme Court in Gopal Vijay Verma Vs. Bhuvneshwar Prasad Sinha (supra), in my view, the Revisional

Court was justified in setting aside the order of the trial Court. The order impugned does not require any interference in the inherent jurisdiction. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court.

The criminal miscellaneous petition is, therefore, dismissed. The interim order dated 21-4-2005 is vacated and the stay petition stands dismissed.

(H.R. PANWAR), J.

mcs